

REMARKS

Claims 12 to 18 are added, and therefore claims 6 to 10 and 12 to 18 are currently pending in the present application (since claim 11 was previously canceled).

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration of the present application is therefore respectfully requested.

Claims 6 to 9 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,461,357 ("Yoshioka").

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Final Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

While the rejections may not be agreed with, to facilitate matters, claim 6 has been rewritten to include the feature in which *an attention range is determined as a function of at least one predetermined parameter, wherein the attention range includes a threshold distance at which a restraint unit associated with the vehicle is triggered, the threshold distance being selected to optimize, based on a duration required for deployment of the restraint unit, a time of triggering.*

In contrast to claim 6, as presented, Yoshioka only refers to a threshold distance l_3 at

which automatic braking occurs. Because the braking is instantaneous, Yoshioka could not possibly contemplate selecting the threshold distance to optimize triggering time based on a duration of deployment. Instead, the threshold distance l_3 is only a function of a road friction coefficient, a relative speed and a vehicle speed (col. 6, lines 21 to 53).

Accordingly, claim 6, as presented, is allowable, as are its dependent claims 7 to 9.

Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Yoshioka in view of U.S. Patent App. No. 2002/0134607 ("Recknagel") or U.S. Patent No. 6,213,512 ("Swann").

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 10 depends from claim 6, as presented, and is therefore allowable for the same reasons as claim 6, since Recknagel and Swann do not cure -- and have not been asserted to cure -- the critical deficiencies of Yoshioka as to claim 6.

Under 35 U.S.C. 103(c)(1), a reference that qualifies as prior art under 35 U.S.C. 102 (e), (f) or (g) does not preclude patentability as long as the reference is subject to an obligation of assignment to the same entity. Actual ownership at the time of invention is not required. Further, a clear and conspicuous statement of common ownership is sufficient evidence to establish common ownership or an obligation to assign (See MPEP 706.02(l)(2)(II)).

Since the Statement of Common Ownership included in the Amendment dated February 12, 2009 is clear and conspicuous so as to establish that the present application was, at the time the invention of the present application was made, subject to an obligation of assignment to the same entity as the Recknagel reference, i.e., Robert Bosch GmbH, it is respectfully submitted that Recknagel is a not a valid 103(a) prior art reference as applied against the present application.

It is therefore respectfully requested that the Recknagel reference be withdrawn. Otherwise, it is respectfully requested that the Examiner explain why it has not been withdrawn.

Accordingly, claim 10 is allowable for these additional reasons.

New claims 12 to 18 do not add any new matter and are supported by the present application. Claims 12 to 18 depend from claim 6, as presented, and are therefore allowable for the same reasons. Additionally, each of claims 12 to 18 includes further features that are not disclosed or suggested by the applied references, as any review of the applied references makes plain.

Accordingly, claims 6 to 10 and 12 to 18 are allowable.

CONCLUSION

In light of the foregoing, it is respectfully submitted that all of the presently pending claims are in condition for allowance. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,


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